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City of Seattle
Department of Administrative Services

Kenneth J. Nakatsu, Director
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

April 1, 1996

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Rm. 222
Washington, D.C. 20552

Dear Mr. Caton:

Re: Comments of City of Seattle
In the Matter of Implementation of Section 302 of the Telecommunications Act of 1996,
Open Video Systems, CS Docket No. 96-46

This letter presents preliminary comments by the City of Seattle with regard to CS Docket No. 96-46, with specific commentary regarding the implementation of Open Video Systems.

The City of Seattle requests that the comment period be extended, specifically for comments on the characteristics of Open Video Systems, as embodied in paragraphs 10 -73. These characteristics will be critical for the successful introduction Open Video Systems in a manner that serves to promote competition, without damage to citizen and local government interest. While recognizing the short time-frame established in the Telecommunications Act requiring the FCC to complete its rule-making on Open Video Systems, this initial commentary needs to allow thoughtful contemplation of the potential impacts of Open Video Systems on the current franchised cable systems to assure that competition is facilitated.

PEG

Paragraph 19: Should the PEG channels count against the one-third selection of the OVS operator?

No. The City of Seattle concurs with the tentative conclusion of the FCC. To do otherwise would provide an additional restraint on the OVS operator which might reduce the viability of the service as a vehicle for increased competition.

Paragraph 57: How should the OVS operator provide PEG?

The Local Franchising Authority should be able to establish the PEG requirements an OVS operator must meet in order to match the obligations of the cable operator(s) and to notify the OVS operator of such requirements. The operator should interconnect with the Cable Operator(s) PEG feeds, as do the multiple Cable Operators when a single block of PEG channels are carried by multiple Cable Operators. The franchising authority should determine if cost sharing is the appropriate mechanism with the cable provider or whether the OVS provider should contribute (either through the "franchise-fee equivalent" or with a deduct from the "franchise-fee equivalent" for direct expenditures) to expand the equipment and programming capability associated with PEG.

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Paragraphs 59: Should PEG and must-carry channels be made akin to "basic" service?

Yes. The logic is similar to the FCC's tentative conclusion about the control of these channels. They are mandated and thus are an overhead for the OVS as a whole. Similarly, they are mandated for accessibility by all subscribers, and should be provided to all customers, regardless of programmer to which the customer has subscribed. Otherwise, the OVS provider alone has these channels and their cost burden; if the costs are carried as a mandated "system overhead", to avoid burdening the OVS provider alone, then all customers are in fact paying for these channels and should receive them. PEG government access channels may be used as an important source of on-going emergency information updates in the event of an emergency, so should be available to all subscribers. Finally, without access to these channels, the must-carry nature of the channels is not fulfilled.

Relationship between Existing Cable Provider(s) and OVS

Paragraph 15: Should an OVS provider be able to limit a competing cable provider from being able to provide programming over the OVS?

Yes, except in specific circumstances. There are significant concerns that the competing cable provider could, through provision of programming over the OVS, damage the ability for the OVS provider to compete effectively. The cable provider would have already paid royalties and copyright fees based on the same headend coverage area, so costs may be lower. The cable provider could occupy channel space that may be needed for the OVS provider and other programmers to effectively compete with the cable provider. However, there is one circumstance where the ability of the cable provider to obtain carriage on the OVS may enhance competition; where the channels provided by the cable provider are not carried on the cable network. This may occur where a cable provider is not financially capable of upgrading their network to provide additional channel capacity. In the circumstance where the cable provider can use the OVS to add new channels not provided on their cable system, the public, and competition, are better served.

Paragraph 65: Should cable operators be able to become OVS providers?

Cable operators should not be permitted to convert franchised cable systems into open video systems. Indeed, the conversion of a cable system from operating under a franchise to operating as an OVS may be constrained by their franchise contract. The FCC should not preempt any requirements of an existing franchise which may require negotiation in order to terminate a franchise prior to its expiration.

Cable Operators should be able to enter new markets as operators of OVS, and should be permitted to provide programming on OVS if they are competing with an incumbent cable operator.

Local control of the right of way, in the absence of any existing agreement for operation (as all telephone companies providing service would have), may require some form of negotiation for an OVS entry who is neither a telephone company nor an incumbent cable provider with a current franchise.

The potential for an existing cable operator, in the absence of competition, to avoid rate regulation through a conversion to OVS is somewhat troubling, especially in the circumstance where there is not substantial interest from other programmers in utilizing the OVS.

Other Competitive Issues -- Preliminary Comments

Paragraph 18: Switched Digital

The tentative conclusion of the FCC, that switched digital has infinite capacity, also implies that there is no limitation on the number of channels that the OVS operator can control. As long as the FCC rules preserve the

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ability for non-affiliated programmers to always obtain carriage on the system, this conclusion appears at first glance to be consistent with the competitive goals.

Paragraph 20: How to handle channel allocation with only one additional programmer?

To the degree allowed by the Act, the FCC should allow the OVS operator (and its affiliates), when only a single non-affiliated programmer seeks carriage, to select 50% of the channels, excluding the PEG and must-carry channels, to avoid a competitive disadvantage to the non-affiliated programmer.

Paragraph 26: How to handle later opportunities for video programmers to access the OVS?

The FCC rules must provide for a periodic open enrollment period whereby a new programmer can access an otherwise full OVS. The FCC should be cautious in allowing the interval between open enrollment periods to be lengthy; long periods will stifle the competitive process and frustrate this primary thrust of the Act. The FCC rules should establish a system whereby the burden of providing the channel capacity for new entrants, when not provided through an expansion of channel capacity, be shared among the incumbent providers. The OVS provider, however, if already selecting only one-third of the channel capacity, should not have to reduce its selections.

Paragraphs 36-41: How to handle Channel Sharing?

In addressing the issue of channel sharing, the FCC should pay particular attention to the issue of copyright fees and how they are assessed. Where those fees are based on the number of customers who could be served by the distribution system (served from a headend, whether all customers are capable of receiving the programming or not), channel sharing may not effectively operate, without distorting the competitive environment, in the absence of compensating rules.

Please contact Matthew Lampe at (206) 684-0504 or by e-mail, Matt.Lampe@ci.seattle.wa.us if you have questions regarding these comments.

Sincerely,



Matthew Lampe
Director, Strategic Planning

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cc: Steve Johnson, Office of Intergovernmental Relations
Tina Podlodowski, Seattle City Council, Telecommunications and Technology Committee